

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

DAVID GUTIERREZ,

*Plaintiff,*

v.

JOHN DOE and LOWE'S HOME  
CENTERS, LLC a/k/a LOWES HOME  
CENTERS INC,

*Defendants.*

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CIVIL CASE NO. 3:21-cv-00258  
JURY TRIAL DEMANDED

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DEFENDANT LOWE'S HOME CENTERS, LLC'S  
NOTICE OF REMOVAL

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Pursuant to 28 U.S.C. § 1441, Defendant, LOWE'S HOME CENTERS, LLC a/k/a LOWES HOME CENTERS INC (*incorrectly named*) removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), LOWE'S sets forth the following "short and plain statement of the grounds for removal."

I.  
**THE REMOVED CASE**

1. The removed case is a civil action filed with the 327<sup>th</sup> Judicial District Court of El Paso County, Texas, on August 31, 2021, styled *David Gutierrez v. John Doe, and Lowe's Home Centers, LLC a/k/a Lowes Home Centers Inc*, under Cause No. 2021DCV3087 (the "State Court Action").

**II.**  
**DOCUMENTS FROM REMOVED ACTION**

2. Pursuant to FEDERAL RULE OF CIVIL PROCEDURE 81 and 28 U.S.C. § 1446(a), Defendant attaches the following documents to this Notice of Removal:

- (a) A list of all parties in the case, their party type and current status;
- (b) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
- (c) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her;
- (d) A record of which parties have requested trial by jury; and
- (e) The name and address of the court from which the case is being removed.

**III.**  
**REMOVAL PROCEDURE**

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the United States District Courts for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The El Paso Division of the Western District Court of Texas is the United States district and division embracing El Paso County, Texas, and the county in which the State Court Action is pending.

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders in the State Court Action as of the date of this pleading are attached hereto as ***Exhibit "B"*** and incorporated herein for all purposes.

5. Defendant will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 327<sup>th</sup> Judicial District Court, of El Paso County, Texas, where the State Court Action is currently pending.

#### **IV. REMOVAL IS TIMELY**

6. According to the State Court Action file, Defendant LOWE'S HOME CENTERS, LLC was served with a copy of Plaintiff's Original Petition ("Petition") on September 14, 2021, via personal service.

7. Since the thirtieth day after service of the Petition on Defendant LOWE'S HOME CENTERS, LLC falls on October 14, 2021, this Notice of Removal is being timely filed within the time limits specified in 28 U.S.C. § 1446(b).

#### **V. VENUE IS PROPER**

8. The United States District Court for the Western District of Texas – El Paso Division, is the proper venue for removal of the State Court Action pursuant to 28 U.S.C. § 1441(a) because the 327<sup>th</sup> Judicial District Court of El Paso County, Texas, is located within the jurisdiction of the United States District Court for the Western District of Texas – El Paso Division.

**VI.**  
**DIVERSITY OF CITIZENSHIP EXISTS**

9. This is a civil action relating to a negligence claim that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

10. As admitted in the Petition, Plaintiff is a citizen and resident of El Paso County, Texas and is domiciled there.<sup>1</sup>

11. Defendant LOWE'S HOME CENTERS, LLC, is a foreign Limited Liability Company organized and existing under the laws of the State of North Carolina. The Limited Liability Company is comprised of the following six managing members, and there are no other members: Akinjide Falaki who is domiciled in and a resident and citizen of the State of North Carolina; David R. Green, who is domiciled in and a resident and citizen of the State of North Carolina; Beth R. MacDonald who is domiciled in and is a resident and citizen of the State of North Carolina, Tiffany L. Mason, who is domiciled in and is a resident and citizen of the State of North Carolina; Brandon J. Sink, who is domiciled in and is a resident and citizen of the State of North Carolina, and Gary White, who is domiciled in and a resident and citizen of the State of North Carolina. Additionally, Defendant's principal office and principal place of business is located at 1605 Curtis Bridge Road in Wilkesboro, North Carolina 28687. Pursuant to 28 U.S.C. § 1332(c)(1), Defendant is not a citizen of the State of Texas. Defendant is a resident and citizen of the State of North Carolina.

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<sup>1</sup> *Id.* Plaintiff's Original Petition at p. 1, ¶ 2.

12. Because the Plaintiff is a resident and citizen of the State of Texas and Defendant and all of Defendant's members are residents and citizens of the State of North Carolina, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

**VII.**  
**THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

13. In the Petition, Plaintiff expressly pleads "an amount in damages in excess of \$1,000,000.00."<sup>2</sup>

14. Based on the aforementioned facts, the State Court Action may be removed to this Court by Defendant in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this is a civil action pending within the jurisdiction of the United States District Court for the Western District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy as specifically pled by the Plaintiff, exceeds \$75,000, exclusive of interest and costs.

**VIII.**  
**FILING OF REMOVAL PAPERS**

15. Pursuant to 28 U.S.C. § 1446(d), Lowes is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 327<sup>th</sup> Judicial District Court of El Paso County, Texas, in which this action was originally commenced.

**IX.**  
**CONCLUSION**

16. Defendant LOWE'S HOME CENTERS, LLC hereby removes the above-captioned action from the 327<sup>th</sup> Judicial District Court of El Paso County, Texas, and

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<sup>2</sup> See, "Plaintiff's Original Petition" at p. 7, ¶21.

requests that further proceedings be conducted in the United States District Court for the Western District of Texas – El Paso Division, as provided by law.

Respectfully submitted,

**MAYER LLP**

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By: /s/ Robin R. Gant

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**ATTORNEYS FOR DEFENDANT**

**LOWE'S HOME CENTERS, LLC a/k/a**

**LOWES HOME CENTERS INC**

*(incorrectly named)*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on October 14, 2021, the foregoing *Notice of Removal* was electronically filed, as required by the United States District Court for the Western District of Texas, using the Court's CM/ECF filing system, which will provide notice and a copy of this document, with attachments, to the following, who are indicated to be registered ECF filers in the United States District Court for the Western District of Texas:

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- ☐ CM/ECF
- ☐ Certified Mail/Return Receipt Requested

/s/ Robin R. Gant

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